IN THE

Supreme Court of the United States.

No. 336.

CHICAGO, INDIANAPOLIS AND LOUISVILLE RAILWAY COMPANY, *Plaintiff in Error*,

v.

PATRICK MCGUIRE *et al.*, *Defendants in Error*.

PARTIAL TRANSCRIPT OF RECORD.

(Complaint.)

STATE OF INDIANA, } ss:
PULASKI COUNTY, }

In Circuit Court, January Term, 1898.

CHICAGO, INDIANAPOLIS & LOUISVILLE R. R. Co.

v.

PATRICK MCGUIRE, M. M. HATHAWAY, PHILLIP DELLINGER, *Sheriff of Pulaski County, Indiana.*

The plaintiff complains of the defendants and says that it is the owner in fee simple of the following de-

scribed real estate situated in the county of Pulaski and state of Indiana, to wit:

A piece or tract of land beginning at the southwest corner of Yellow and Bill streets, in the town or village of Francesville, Pulaski county, Indiana, thence south along the west line of said Bill street to the north line of Sherman avenue, thence west with said north line of Sherman avenue a distance of one hundred and fifty feet (150 feet), thence north parallel with said west line of Bill street, to the south line of Yellow street, thence east with the south line of Yellow street a distance of one hundred and fifty (150) feet to the place of beginning.

Said piece or parcel of land being the same described in a certain plat dedicated by one Allison in March, 1862, and acknowledged and recorded in the office of the recorder of Pulaski county, Indiana, April 8, 1862.

That the defendants set up and assert some title, claim or interest in the said described real estate which constitutes a cloud upon plaintiffs title, and the plaintiff prays a decree quieting its said title, and that the defendants be enjoined from setting up or asserting any title, claim or interest therein.

FIELD & NYE,
and GEO. W. KRETZINGER,
Attorneys for Plaintiff.

(Answer.)

STATE OF INDIANA,
COUNTY OF PULASKI, } ss:

In the Pulaski Circuit Court, January Term, 1898.

CHICAGO, INDIANAPOLIS & LOUISVILLE RAILWAY COMPANY

v.

PATRICK McGUIRE AND M. M. HATHAWAY.

Defendants and for answer to the first paragraph of plaintiff's amended complaint say, that they deny that the plaintiff is the owner and denies that it has any interest whatever in the following described parts and portions of the lands described in the plaintiff's complaint, to wit: Commencing at the northwest corner of lot No. twelve (12), in block No. nine (9), in the town of Francesville, in Pulaski county, Indiana, thence west, parallel with Yellow street in said town, 50 feet to a post on the west line of Bill street at the place of beginning; thence west, parallel with the south line of Yellow street to a post at the east line of the right of way of what was formerly known as the Louisville, New Albany and Chicago Railway Company, thence south with the east line of said right of way, 190 feet to a post, thence east parallel with the south line of Yellow street, 150 feet to the west line of Bill street, thence north with the west line of Bill street, 190 feet to the place of beginning.

Also commencing with the southwest corner of lot No. seven (7), in block No. nine (9), in said town, thence west with the north line of Montgomery street to the west line of Bill street to a post at the place of be-

ginning; thence west with the north line of said Montgomery street to a post five (5) feet east of the east line of the right of way of what was formerly known as the Louisville, New Albany and Chicago Railway Company, thence north parallel with the east line of said right of way sixty-six (66) feet to a post, thence east parallel with the north line of said Montgomery street to the west line of Bill street, thence south with sixty-six (66) feet to the place of beginning.

Commencing at the northwest corner of lot No. twelve (12), in block No. fourteen (14), in said town, thence west with the south line of Montgomery street to the west line of Bill street to a post at the place of beginning; thence west with the south line of Montgomery street to a post at a point thirty (30) feet east of the east line of right of way of what was formerly known as the Louisville, New Albany and Chicago Railway Company, thence south parallel with the east line of said right of way three hundred and sixty (360) feet to the north line of James street to the west line of Bill street, thence north with the west line of Bill street three hundred and sixty (360) feet to the south line of Montgomery street to the place of beginning.

Also: Commencing at the northwest corner of lot No. twelve (12), in block No. twenty-two (22), in said town, thence west with the south line of James street to the west line of Bill street to a post at the place of beginning; thence west with the south line of James street to the east line of the right of way of what was formerly known as the Louisville, New Albany and Chicago Railway Company, thence south with the east line of the said right of way three hundred and sixty (360) feet to the north line of Lyman avenue, thence east with the north line of Lyman avenue to the west line of Bill street three hundred and sixty (360) feet

to the south line of James street to the place of beginning.

All of the above described lands being in the town of Francesville, in Pulaski county, in the state of Indiana.

And as to such land above described the defendants deny each and every allegation contained in the plaintiff's amended complaint. And as to the remaining portions of said lands described in the plaintiff's amended complaint, these defendants admit that the plaintiff is the owner thereof, and these defendants hereby expressly disclaim all interest therein or any claims thereto whatever.

M. WINFIELD,
and STEIS & HATHAWAY,
and CHARLES C. SPENCER,
Attorneys for Defendants.

(Trial.)

There was a trial by jury on this first paragraph of complaint and the above answer.

"The issues being joined between the parties, the defendants now move the court that this cause be tried by a jury, which motion is sustained by the court, to which ruling of the court the plaintiff excepts and is given ten days in which to file its bill of exceptions.

"And afterwards, to wit: On the 19th day of May, 1899, being the 23d judicial day of the said April Term, 1899, of said White Circuit Court, present the said special judge, James V. Kent, and the other officers as heretofore, the following further proceedings were had in the case of

CHICAGO, INDIANAPOLIS AND LOUISVILLE RAILWAY COMPANY

v.

PATRICK MCGUIRE, M. M. HATHAWAY AND PHILLIP DELLINGER, *Sheriff of Pulaski County, Indiana.*

Come again the parties, in person and by their attorneys, and comes also the jury, and the testimony being closed the court now directs the jury to return a verdict for the defendants herein, and accordingly the jury now returns their verdict for the defendants, reading as follows:

STATE OF INDIANA, WHITE COUNTY, } ss:

In the White Circuit Court, April Term, 1899.

(Verdict.)

CHICAGO, INDIANAPOLIS AND LOUISVILLE RAIL AY COMPANY

v.

PATRICK MCGUIRE, M. M. HATHAWAY, AND PHILLIP DELLINGER, *Sheriff of Pulaski County, Indiana.*

We the jury find for the defendants.

JAMES P. FOLTZ, Foreman.

and thereupon the plaintiff files its motion for a new trial which motion is in these words.

STATE OF INDIANA, } ss: (Motion for New Trial.)
WHITE COUNTY, }

In the White Circuit Court, April Term, 1899.

CHICAGO, INDIANAPOLIS AND LOUISVILLE RAILWAY COMPANY

v.

PATRICK MCGUIRE, M. M. HATHAWAY, PHILLIP DELLINGER, *Sheriff Pulaski County.*

The plaintiff herein moves the court for a new trial in said cause upon the following grounds, to wit:

1st. Because the court erred in directing the jury to return a verdict for the defendants.

2d. Because the court erred in striking out the 2d paragraph of plaintiff's amended complaint.

3d. Because the court erred in ordering the plaintiff to make its second paragraph of amended complaint more specific.

4th. Because the verdict of the jury is contrary to the evidence.

5th. Because the verdict of the jury is contrary to law.

6th. Because the verdict of the jury is not supported by sufficient evidence.

7th. Because the court erred in refusing to permit the plaintiff to introduce and read in evidence the town plat of the town of Francesville, made and executed by one Allison in 1862, recorded in the recorder's office of Pulaski county.

8th. Because the court erred in permitting the defendants, over the objection and exception of the plaintiff, to read in evidence the return of the sheriff on the execution issued upon the judgment of the de-

fendant McGuire against the Louisville, New Albany and Chicago Railway Company.

9th. Because the court erred in permitting the defendants to read in evidence, over plaintiff's objection and exception, the deed by the Sheriff Dellinger to the defendant Hathaway on the execution issued upon the judgment of the defendant McGuire against the Louisville, New Albany and Chicago Railway Company.

10th. Because the court erred in refusing to strike out said sheriff's deed from the evidence in said cause on plaintiff's motion.

11th. Because the court erred in permitting the witness Hathaway to testify, over the objection and exception of the plaintiff, to the occupancy and use of the grounds in controversy by various persons prior to February 20, 1896.

12th. Because the court erred in permitting the witness Hathaway to testify, over the objections and exceptions of the plaintiff, to the use and occupancy of the land in controversy after February 20, 1896.

13th. Because the court erred in refusing the offered testimony of the witness Petre as to the amount and payment of taxes to the town of Francesville on the land in controversy for town purposes and for street improvements for the years 1891 to 1898 inclusive, as the same appeared on the tax duplicate of said town of Francesville.

Whereupon plaintiff prays a new trial.

GEO. W. KRETZINGER,
E. C. FIELD,
Attorneys for Plaintiff.

(Motion Overruled.)

And the court being advised, overrules plaintiff's said motion for a new trial, to which ruling of the court the plaintiff at the time excepts, and thereupon the defendants' attorneys move the court for judgment upon the verdict of the jury, which motion is sustained by the court.

(Judgment.)

It is therefore adjudged and decreed by the court that the plaintiff take nothing by its cause of action, and that the defendants recover of and from the plaintiff their costs in this behalf expended.

(Appeal.)

Whereupon the plaintiff prays an appeal to the supreme court of Indiana, which is granted by the court, and the plaintiff is given sixty days in which to make and file its bill of exceptions herein, and the plaintiff is given thirty days in which to file its appeal bond herein in the sum of five hundred dollars, with James Murdock as surety thereon, which surety is approved by the court.

(Assignment of Errors.)

In the Supreme Court of Indiana.

CHICAGO, INDIANAPOLIS AND LOUISVILLE RAILWAY COMPANY, *Appellant*,
v.
PATRICK MCGUIRE, M. M. HATHAWAY, AND PHILLIP DELLINGER, *Sheriff of Pulaski County, Indiana*, *Appellees*.

Assignment of Errors.

The appellant avers that there is manifest error in the judgment and proceedings in this cause, in this:

First. The court erred in sustaining the appellees' motion for a new trial as of right.

Second. The court erred in directing the jury to return a verdict in favor of appellees.

Third. The court erred in ordering appellant to make its second paragraph of amended complaint more specific.

Fourth. The court erred in striking out the second paragraph of appellant's amended complaint.

Fifth. The court erred in overruling appellant's motion for a new trial.

Wherefore appellant prays that the judgment be reversed.

E. C. FIELD,
G. W. KRETZINGER,
W. S. KINNAN,
and SELLERS & UHL,
Attorneys for Appellant.

(The law as to the jurisdiction of the Indiana courts for the hearing of appeals having been changed this case was transferred from the Supreme to the Appellate court.)

(Opinion.)

Appellate Court of Indiana, Division No. 1.

Jan. 7, 1903.

CHICAGO, INDIANAPOLIS AND LOUISVILLE RAILWAY COMPANY
v.
PATRICK MCGUIRE *et al.*
} Appeal from Circuit Court of White County.

HENLEY, J. This was an action commenced by appellant to quiet its title to a certain parcel of land sit-

uated in Pulaski county, Ind. The cause was tried by a jury. After the evidence was concluded the trial judge instructed the jury to return a verdict for appellees. The question presented here arises upon the motion for a new trial, and questions the action of the trial court in so instructing the jury. The facts upon which the instruction was based are not in dispute. Both appellant and appellees claim title through the Louisville, New Albany & Chicago Railway Company. Appellant claims title through certain mortgages given by the Louisville, New Albany & Chicago Railway Company which were foreclosed in the United States Circuit Court for the District of Indiana, and through which foreclosure, and other conveyances following it, its title became vested. Appellees' title is claimed as follows: On the 24th day of September, 1896, the appellee, Patrick McGuire, recovered judgment in the White circuit court of Indiana against the Louisville, New Albany & Chicago Railway Company for $2,416.23 and costs. On the 16th day of October, 1897, the said McGuire caused an execution to be issued by the clerk of the White circuit court to the sheriff of Pulaski county. On the 18th day of October, 1897, the said sheriff levied the execution upon the real estate in dispute. On the 13th day of November, 1897, the sheriff sold this real estate at public sale, and the appellee, Hathaway, became its purchaser, and on the 23d day of November, 1898, the sheriff of Pulaski county executed to him a deed. A transcript of the McGuire judgment had been filed in the Pulaski circuit court on the 28th of January, 1897.

It is contended by appellant that the real estate in controversy is a part of its depot grounds at Francesville, Ind., and that the foreclosure and sale of the

property of the Louisville, New Albany and Chicago Railway Company, through which foreclosure and sale appellant obtained whatever title it may have in the disputed premises, carried with it the title to said disputed premises. The judgment of McGuire against the Louisville, New Albany and Chicago Railway Company was obtained after the execution of the foreclosed mortgages through which appellant claims title. The contention of counsel for appellees is that the disputed property was not embraced within the mortgages and foreclosure, and that the same was not covered by the clause in each mortgage intended to cover after-acquired property, and therefore could not have been embraced within the foreclosure and sale under the proceedings in the United States Court. An abstract question of law is therefore presented, as to whether or not the property in dispute passed by the foreclosure and sale. There were three mortgages executed by the Louisville, New Albany and Chicago Railway Company—one in 1886, one in 1890, and one in 1894; all being prior to the rendition of the McGuire judgment. In the mortgage of 1886 the description of after-acquired property is as follows: "Which may at any time hereafter during the continuance of this trust be acquired by the said railroad company for purposes connected with or appertaining to the railroad or railways above mentioned or described."

The description of the after-acquired property in the mortgage executed in 1890 was in the following words: "And all that it may in the future add, construct, or acquire for the purposes of and connected with or appertaining to the railroads or railways above mentioned and described." The description of the after-acquired property in the mortgage executed in 1894 was in the following words: "What may at any time

before or after the date of this indenture be acquired by or for the said railway company for purposes connected with or appertaining to said railroads or railways hereby conveyed.'' The decree directing the sale of the Louisville, New Albany and Chicago Railway Company follows the description in the mortgage. The master's deed conveying the property does not vary the description as to after-acquired property. The property in dispute was properly acquired by the Louisville, New Albany and Chicago Railway Company after the execution of the above described mortgages. The trial court determined that the undisputed evidence established that the land levied upon and sold to satisfy appellee's judgment was not used by appellant for railroad purposes; that it was not needed for such purposes, and that it was not properly a part of the ''lay-out'' of the road; and that therefore the clauses in the mortgages covering after-acquired property did not cover the property in dispute. The evidence shows that the particular parcel of land in dispute has never been used by the railroad company for railroad purposes; that, while it is contiguous to and adjacent to the depot grounds of appellant, it has buildings located upon it which have been leased to different parties, and occupied and used as a barber shop, grocery, postoffice, and in other ways entirely foreign to the necessary means of operating the railroad.

In speaking of the property covered by the after-acquired clause in a mortgage given by a railroad company, Mr. Short, in his excellent work on the Law of Railway Bonds and Mortgages, at section 209, says: ''The lien will be confined to the lands which were prospectively necessary and convenient for the construction and future operation of the road, and will

not embrace lands situated outside of the 'lay out' of the road, which had been taken over by the company in order to acquire at a less cost the land actually needed for the line itself." A case very similar to the one under consideration is the case of *Seymour* v. *Railroad Co.*, 25 Barb. 284. It involved a controversy between the judgment creditors and the purchaser of railroad property at foreclosure sale, and in that case it was squarely held that all lands acquired by the railroad company after the execution of the mortgage which were not used for railroad purposes were not covered by the lien of the mortgage, and did not pass by the foreclosure and sale to the purchaser, but were subject to a lien of the judgment creditors. The court, in that case, at page 312, said: "It is in proof that some of the lands purchased in Batavia have never been used for railroad purposes; that in some instances whole lots were purchased to secure a right of way across them. If the railroad company, for this purpose, had purchased a lot of 10 or 100 acres, it can not be that any more of such lots would be embraced in this mortgage to the plaintiffs than was actually taken and required for the road. In respect to all such lands outside of the legal limits of their railroad track and branches, and excepting land used for shops, depots, stations, turnouts for wood or water, or for other legitimate purposes, the lien of the defendants' judgment must prevail." To the same effect, see *Railroad Co.* v. *Parker*, 143 U. S. 42, 12 Sup. Ct. 364, 36 L. ed. 66; *Railroad Co.* v. *Coffin*, 50 Conn. 150; *Mississippi Val. Co.* v. *Chicago, St. L. & N. O. R. Co.*, 58 Miss. 896; *Eldridge* v. *Smith*, 34 Vt. 484; *Shirley* v. *Railway Co.*, 78 Tex. 136, 10 S. W. 543; *Railroad Co.* v. *Parker*, 143 U. S. 42, 12 Sup. Ct. 364, 36 L. ed. 66; *Humphreys* v. *McKissock*, 140 U. S.

304, 11 Sup. Ct. 1022, 35 L. ed. 395; *Dinsmore* v. *Railroad Co.*, 12 Wis. 725; *Farmers' Loan and Trust Co.* v. *Commercial Bank*, 11 Wis. 207; *Walsh* v. *Barton*, 24 Ohio St. 28.

We think the trial court was right in instructing the jury, upon the evidence submitted, to return a verdict for appellees. Judgment affirmed.

Following the adverse decision the appellant in the state court, on March 7, 1903, filed its petition for a rehearing, in which it stated the following points of alleged error:

(Petition for Rehearing.)

"I.

"The court erred in holding that the property in dispute was property acquired by the L., N. A. & C. Co. after the execution of the mortgages upon which appellant's title is based.

"II.

"The court erred in holding that the several mortgages upon which appellant's title is based, as to future-acquired property, limited the lien to property acquired for railway purposes.

"III.

"The court erred in holding that the lien of these several mortgages did not attach to after-acquired property unless it was used for railway purposes.

"IV.

"The court erred in failing to decide whether the second paragraph of complaint was sufficient.

"V.

"The court erred in holding that the jury was properly instructed to find for the appellees.

"VI.

"The court erred in failing to decide whether the offered plat was valid or was proper evidence.

"VII.

"The court erred in failing to decide whether this plat was proper evidence in connection with the Brooks deed, made to confirm it.

"VIII.

"The court erred in failing to decide whether appellant could prove payment of taxes and other acts of possession in order to show that it, in fact, had title when these mortgages were made.

"IX.

"The court erred in not reversing the judgment of the lower court.

"Wherefore the appellant prays a rehearing and all proper relief. Respectfully submitted,

"E. C. FIELD,
"G. W. KRETZINGER,
"H. R. KURRIE,
"*Attorneys for Appellant.*"

February 28, 1903.

This petition for a rehearing having been overruled, the appellant below, plaintiff in error here, filed in the supreme court its petition for the transfer of the cause to the supreme court under subdivision 2, of section 1337j, R. S. 1901, and as grounds for such transfer stated the following:

"I.

"The appellate court held that it was shown without dispute that the property in controversy was not used for railway purposes; that it was after acquired, and on this account was not within the description in the mortgages upon which appellant's title is based. This was error. The court thereby refused to give due effect to the judgment of the federal court.

"II.

"While it is not so stated in so many words, yet the appellate court must have held that the evidence offered, but excluded, by which it was intended to prove title at the date of the several mortgages, and bring the tract within the 'then owned' clause was properly excluded. This was error."

This petition was also denied.

And thereupon this writ of error was sued out.

IN THE APPELLATE COURT OF THE STATE OF INDIANA.

THE CHICAGO, INDIANAPOLIS AND LOUISVILLE RAILWAY COMPANY	
v.	No. 3780.
PATRICK MCGUIRE, M. M. HATHAWAY, AND PHILLIP DELLINGER, *Sheriff of Pulaski County, Indiana.*	

To any Justice of the Supreme Court of the United States, or the Chief Judge of the Appellate Court and Presiding Judge of Division No. 1 of said Court of the State of Indiana.

Petitioner, The Chicago, Indianapolis & Louisville Railway Company, respectfully represents that on or about the 8th day of November, 1897, the Chicago, Indianapolis and Louisville Railway Company commenced a suit in the circuit court of Pulaski county, Indiana, against the defendants, Patrick McGuire, M. M. Hathaway, and Phillip Dellinger, sheriff of Pulaski county, Indiana, to quiet its title to certain lands and premises situated in the county of Pulaski, in the state of Indiana, particularly described in plaintiff's petition in said suit; and afterwards in response to process served upon them, the said McGuire, Hathaway and Dellinger, appeared and interposed among others the defense hereinafter mentioned in said action, and upon the trial of said cause in due course judgment was rendered by said circuit court in favor of said defendants. From the judgment so rendered by said circuit court, the said Chicago, Indianapolis and Louisville Railway Company appealed to the appellate court of the state of Indiana, where said

cause upon appeal was numbered and entitled as above; and afterwards, on, to wit, the 7th day of January, 1903, division No. 1 of said appellate court of Indiana rendered judgment whereby it affirmed the judgment of said circuit court, and rendered judgment in favor of said McGuire, Hathaway and Dellinger, and against said Chicago, Indianapolis and Louisville Railway Company, for all lands involved in said suit.

Afterward, and in due time, said Chicago, Indianapolis & Louisville Railway Company, filed, in said appellate court of Indiana, its petition for a rehearing in said cause, and brief in support thereof, which was thereafter, to wit, on the first day of April, 1903, by said court overruled and denied. Thereafter, and in due time, said Chicago, Indianapolis & Louisville Railway Company applied in due form and as authorized by law, to the supreme court of the state of Indiana, for a transfer of said cause, or a writ of error in said cause to said appellate court of Indiana, upon the ground and under the facts hereinafter mentioned, which application was thereafter, to wit, on the thirteenth day of May, 1903, by said supreme court denied, and the transfer of said cause and said writ so prayed for were refused; whereupon, the said judgment of the said appellate court of Indiana, which is the highest court of the state of Indiana in which a decision in said suit could be had, became and is now final.

Petitioner says that it is aggrieved by the said judgment of division No. 1 of the appellate court of Indiana, and the proceedings in said suit, and that in said judgment and proceedings had prior thereto in said cause, errors were committed to the prejudice of the petitioner, because it says there was in said

suit drawn in question the validity of a statute and an authority exercised under the United States, and the decision in said suit was against their validity, and there was drawn in question the validity of a statute, or a constitution of, or an authority exercised under a state [statute], on the ground of their being repugnant to the constitution, or laws of the United States, and the decision in said suit was in favor of their validity, and that titles, rights, privileges and immunities were in said suit claimed by petitioner under the constitution and statutes of, and commissions held, and authority exercised under, the United States, and the decision in said court was against the titles, rights, privileges and immunities specially set up and claimed therein by petitioner under such constitution, statutes, commissions and authorities, as will hereinafter more fully appear.

Petitioner says that upon the trial of said cause in said circuit court, the Chicago, Indianapolis and Louisville Railway Company, the plaintiff therein, introduced in evidence a decree of the circuit court of the United States, in and for the district of Indiana, rendered January 23, 1897, foreclosing three certain mortgages executed by the Louisville, New Albany and Chicago Railway Company, under whom the defendants in said suit claimed, one of said mortgages being executed to the Central Trust Company of New York, and James Murdock, as trustee; one of said mortgages being executed to the Farmers' Loan and Trust Company, and John H. Baker, as trustee, and one of said mortgages being executed to the Central Trust Company of New York, and John H. Stotsenberg, as trustee, and ordering the sale of the property embraced in said mortgages; and also introduced other decrees and proceedings of said circuit court of the

United States and its officers, showing sale of said mortgaged property pursuant to said foreclosure decree and specially set up and claimed at the time that said decree and proceedings in said circuit court of the United States embraced the property involved in this suit, and were effectual to vest the title to the same in those under whom the said Chicago, Indianapolis and Louisville Railway Company claimed; and afterward, at the trial of said cause the court instructed the jury therein to return a verdict in favor of the said defendants and against the plaintiff, the petitioner herein, and to the said action and decision of the said court, the said Chicago, Indianapolis and Louisville Railway Company duly excepted, and upon its appeal to the said appellate court duly assigned such ruling of said circuit court as error, as shown by its assignment of error originally numbered 2 and 5; but said division of said appellate court overruled and refused to sustain said assignment of error, and confirmed such action of said circuit court.

Petitioner further says that at the trial of the said cause, and for the purpose of proving that the real estate described in its complaint therein was owned by the said Louisville, New Albany and Chicago Railway Company at the time of the execution of each of said several mortgages above mentioned, and was covered by and included in the said mortgages under that part of the descriptions therein which covered all property of any nature owned by the mortgagor at the time the said mortgages were made, and for the purpose of proving that said property was included in the decree of the said United States circuit court foreclosing said mortgage, where the said decree directed the sale of all property owned by the mortgagor company at the date of the execution of

said several mortgages; and for the purpose of showing that by the sale of said property and execution of deeds by the receiver and special master making the sale and the orders and decrees of the said court subsequent to said decree, the said Chicago, Indianapolis and Louisville Railway Company offered in evidence a plat of the town of Francesville, Indiana, in which said town the said real estate in controversy is situated, executed in 1862 by one Allison, which had been duly recorded, by which said plat the real estate became and was dedicated to the said railway company.

And for the same purpose the said plaintiff company offered to prove its possession of said property and the payment of taxes thereon since said time.

And for the same purpose the said plaintiff company offered in evidence the said plat in connection with a deed for the said real estate recognizing the existence of said plat, which deed was executed by one Brooks and his wife, conceded to be the sole heirs surviving of the owner of said real estate at the time said plat was executed.

The court refused to permit the plaintiff to introduce said plat in evidence; the court refused to permit said plaintiff to prove possession of said real estate since possession of said plat; the court refused to permit the plaintiff to prove the payment of taxes or special assessments assessed against said real estate since the date of said plat, and there was no evidence admitted at the trial of said cause in lieu of such evidence so excluded, or which proved the facts which would have been shown if such evidence had been admitted. To the action and decision of said circuit court in excluding said several items of evidence and in excluding each of them separately and severally,

the said Chicago, Indianapolis and Louisville Railway Company duly excepted, and upon appeal to the said appellate court duly assigned said ruling of said circuit court as error, as shown by the assignment of error originally numbered 2 and 5. But said division No. 1 of the appellate court overruled and refused to sustain said assignment of error and affirmed said action of said circuit court.

Before the trial of said cause the said Chicago, Indianapolis and Louisville Railway Company filed its amended complaint in two paragraphs. In the first paragraph of its said amended complaint the said plaintiff company set up and claimed title to said real estate in controversy in fee simple, and charged that the defendants claimed an interest therein adverse to the title of the plaintiff; that such claim was unfounded, and constituted a cloud on the title of the plaintiff. In the second paragraph of said amended complaint the said plaintiff company charged that it was the owner of an easement in the said real estate. The said paragraph specifically averred the dedication of said property by said plat, and in detail told of the transfer thereof from the then existing corporation owning the same to the said Louisville, New Albany and Chicago Railway Company, and afterwards said company, by force of the decree of the United States Court for the District of Indiana, vested said title in the persons through whom by deed the petitioning company herein claims title to such interest in such property; that the said circuit court, upon the motion of the said defendants, held that said paragraph of complaint was insufficient to show title in this plaintiff to the said property therein described, or any part of it, and directed that said paragraph be made more specific. Whereupon the said plaintiff, believing that

the said paragraph fully and sufficiently showed title to said easement in the petitioner herein by virtue of said plat and said decrees, refused to amend its said paragraph, and because of such refusal the defendants were not required to answer it, and no issue was made upon said paragraph of complaint, and the rights therein averred were denied to the petitioner; that the said petitioner, the Chicago, Indianapolis and Louisville Railway Company, duly excepted to the said ruling of the said circuit court, and upon its appeal to the said appellate court duly assigned such ruling of said circuit court as error, as shown by its assignment of error originally numbered 3 and 4. But said division of said appellate court overruled and refused to sustain said assignment of error, and affirmed such action of said circuit court.

Petitioner further says that each of the rulings above mentioned and complained of with others were duly assigned as error in the application made as aforesaid by the said Chicago, Indianapolis and Louisville Railway Company to the supreme court of the state of Indiana for writ of error or transfer of said cause to it, but the same with the said application for a writ of error or transfer were overruled and denied by said supreme court.

Petitioner refers to the record of said cause, as filed in said appellate court, for further and more complete statements of the rulings and proceedings complained of, and the facts that specially set up and claimed the benefit of the decree aforesaid of said circuit court of the United States, and of the proceedings thereunder, and for the manner in which such claims were set up and made. And petitioner says that in the proceedings above mentioned in said cause, they specially set up and claimed title, rights, privileges and im-

munities, under the constitution and statutes of, and commission held and authorities exercised under, the United States, and the decision of said circuit court and of the said division of said appellate court, and of the said supreme court of the state of Indiana, were against the titles, rights, privileges and immunities, specially set up and claimed by the petitioner, The Chicago, Indianapolis and Louisville Railway Company, in said cause.

Petitioner refers to the assignment of errors filed herewith and prays that the same may be considered for the purposes of this application as a part hereof, and further prays that a writ of error may be allowed and issued herein to the said appellate court in and for Indiana, which now has the record in said cause, for the removal of said cause to the supreme court of the United States, to the end that the error in said judgment and the proceedings in said cause may be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, and that the transcript of the record, proceedings and papers in said cause duly authenticated, may be sent to said supreme court.

E. C. FIELD,
G. W. KRETZINGER,
H. R. KURRIE,
Attorneys for the Chicago, Indianapolis and Louisville Railway Company.

Allowed this 23d day of May, 1903.

FRANK S. ROBY,
Chief Judge of the Appellate Court of Indiana.

JAMES B. BLACK,
Presiding Judge Division No. 1 of the Appellate Court of Indiana.

ENDORSED: In the Appellate Court of Indiana. The Chicago, Indianapolis and Louisville Railway Co. *vs.* Patrick McGuire *et al.* Petition for Writ of Error. Filed May 23, 1903. R. A. BROWN, *Clerk.*

IN THE APPELLATE COURT OF THE STATE OF INDIANA.

Division No. 1.

THE CHICAGO, INDIANAPOLIS AND LOUISVILLE RAILWAY COMPANY

v.

PATRICK McGUIRE, M. M. HATHAWAY, AND PHILLIP DELLINGER, *Sheriff of Pulaski County, Indiana.*

No. 3780.

ASSIGNMENT OF ERROR.

Now comes plaintiff in error in the above entitled cause, The Chicago, Indianapolis and Louisville Railway Company, and on writ of error from the supreme court of the United States says that in the record and proceedings in said cause there is manifest error.

1st. Plaintiff offered and the court admitted in evidence on behalf of plaintiff, the foreclosure proceedings had in the circuit court of the United States and district of Indiana, the decree of foreclosure and sale entered in said proceedings by that court, and the deeds made pursuant to said decree, under which plaintiff in error became the owner of the property involved in the above entitled suit. That the trial

court and appellate court wholly disregarded the force and effect of said foreclosure decree and such evidence made thereunder and pursuant thereto.

2d. That said state courts wholly failed and refused to give full force and effect to said foreclosure decree so entered by the circuit court of the United States as aforesaid, and wholly failed and refused to give any force or effect whatever to the proceedings had under said decree and in the enforcement thereof; in this, that the railroad mortgages foreclosed by said decree in said circuit court of the United States covered and included in its description of the property therein conveyed the real estate here involved, and the decree foreclosing said mortgages so included in the description of the property covered by said mortgages and to be sold in satisfaction thereof, the piece of real estate here involved, notwithstanding which the said state courts wholly failed and refused to give such effect thereto.

3d. That for the purpose of more fully showing that the real estate here involved was owned by the railroad mortgagor at the time of the execution of the mortgages so foreclosed as aforesaid, plaintiff in error offered in evidence on the trial of this cause in the trial court of said state, a plat of the town of Francesville, executed in 1862, by one Allison, which plat had been duly recorded, it appearing that such plat was both executed and recorded long prior to the execution of said foreclosed mortgages, and also offered evidence showing that the mortgagor of said railroad mortgages so foreclosed as aforesaid, had been in possession of and had paid taxes upon said property from the date of the donation of the land here involved to said mortgagor, which donation was made and shown upon said plat from the date of said plat and

its recording down to the institution of the foreclosure proceedings aforesaid, in the circuit court of the United States for the district of Indiana, said proceedings to foreclose having been instituted in said court on the 12th day of November, 1896, which refusal plaintiff in error here assigns for error.

4th. That through said foreclosure proceedings, decree and sale, so entered and had in and through said circuit court of the United States for the district of Indiana, plaintiff in error became the lawful owner of the real estate here involved, and the judgment of the state courts divesting the title of plaintiff in error thereto, constitute a refusal on the part of said state courts to recognize or to give full lawful force and effect to said proceedings, foreclosure decree and conveyances, in and through said federal court, contrary to the constitution and laws of the United States.

Wherefore, said plaintiff in error prays that the judgment of said courts of the state of Indiana, be reversed, and said *courts* [cause] remanded for such further proceedings as the constitution and laws of the United States may require.

G. W. KRETZINGER,
E. C. FIELD,
H. R. KURRIE,
Attorneys for Plaintiff in Error.

ENDORSED: In the Appellate Court of Indiana. The Chicago, Indianapolis and Louisville Railway Co. *vs.* Patrick McGuire *et al.* Assignment of Errors on Writ of Error. Filed May 23, 1903. R. A. Brown, *Clerk.*

IN THE SUPREME COURT OF THE UNITED STATES.

CHICAGO, INDIANAPOLIS AND LOUISVILLE RAILWAY COMPANY,
Plaintiff in Error,

v.

PATRICK MCGUIRE *et al.*,
Defendants in Error.

Cause No. 336.

In the above entitled cause the undersigned, attorneys for the petitioner in error and defendants in error in the above cause, agree that the two pages attached to this stipulation contain a true and correct copy of the proceedings had in the supreme court of Indiana in the above cause, and the certificate of the clerk of said court with reference thereto. We further agree that the Honorable James H. McKenney, clerk of the supreme court of the United States, may attach to the transcript of the record now on file in said court in said cause, the said two pages, as a part of said record before it is printed, and print the same as a part thereof as if said pages had been attached to said transcript as the last pages thereof before it was filed in said court.

E. C. FIELD,
Attorney for Plaintiff in Error.
W. H. H. MILLER,
Attorney for Defendant in Error.

And afterward, to wit: On April 25, 1903, comes the appellant, by counsel, and files its petition to transfer the above entitled cause to the supreme court for decision.

And afterward, to wit: On April 28, 1903, come the appellees, by counsel, and file their answer to appellant's petition to transfer the above entitled cause to the supreme court for decision.

And afterward, to wit: On May 14, 1903, the same being the 148th judicial day of the November term, 1902, of said court, come the parties, by counsel, and the supreme court, being advised in the premises, denies appellant's petition to transfer the above entitled cause to that court for decision.

STATE OF INDIANA, }
SUPREME COURT. }

I, Robert A. Brown, clerk of the supreme court, and *ex officio* clerk of the appellate court in and for the state of Indiana, certify that the above and foregoing is a full, true and complete copy of the proceedings in the supreme court in cause No. 3,780, *Chicago, Indianapolis and Louisville Railway Company* v. *Patrick McGuire et al.*, as appears from the original entries on the dockets of the said supreme court.

IN WITNESS WHEREOF I hereto set my hand and affix the seal of said supreme court, at the city of Indianapolis, Indiana, this 7th day of July, 1903.

(Signed) ROBERT A. BROWN,

[SEAL] *Clerk Supreme Court of Indiana.*